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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK
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3 VIRGINIA L. GIUFFRE,
4
5 Plaintiff,

6 v.

19-cv-7433 (LAP)

7 ALAN DERSHOWITZ,
8
9 Defendant.

Conference

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10 New York, N.Y.
11 **(via telephone)**

12 November 24, 2020
13 1:30 p.m.

14 Before:

15 HON. LORETTA A. PRESKA

16 District Judge

17 APPEARANCES

18 COOPER & KIRK, PLLC
19 Attorneys for Plaintiff
20 BY: CHARLES J. COOPER
21 NICOLE J. MOSS
22 MICHAEL W. KIRK

23 LAW OFFICES OF AIDALA & BERTUNA, P.C.
24 Attorneys for Defendant
25 BY: IMRAN H. ANSARI
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-and-
TODD & WELD LLP
Attorneys for Defendant
BY: HOWARD M. COOPER
CHRISTIAN KIELY

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(Via telephone)

THE COURT: In reading your letters, I wasn't quite sure of what the universe of documents was that we're fighting over, and I'm particularly looking at the November 19th letter, document 209, where you're saying -- and I'm looking at the last paragraph -- "That leaves 475 files that contain confidentiality designations, a significant portion of which contain material that matches the definition of "Confidential Information" to which defendant has already agreed." And then it goes on to say "another significant portion have been produced in this action without a confidentiality designation. The remaining documents are the only documents at issue." How many is that? Do we have any clue?

MS. MOSS: Your Honor, this is Nicole Moss for the plaintiffs. I don't think we have a precise number of how many we're talking about. I don't think it's likely to be a very significant number given, I think, the agreement among the parties that anything having to do with financial, medical, or victim identity information is appropriately under a protective order, and given the fact that, again, much of the other documentation, emails that have been reproduced in this matter that may have at one time had a confidentiality designation in the *Giuffre v. Maxwell* matter, have been reproduced, many of them, in this matter without that designation. So it's some smaller subset.

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1 THE COURT: OK. Thank you.

2 May I ask Mr. Dershowitz's counsel, what is the issue
3 with saying when you want to use something publicly? I think
4 in counsel's letter, she said that, for example, if you want to
5 use a document at a deposition, you just go ahead and use it,
6 and ask for permission to make it public later on. I'm not
7 sure I understand what use we will make of the document that
8 will not be easily fixed by just saying, do you care about this
9 document or not?

10 MR. KIELY: Your Honor, this is Christian Kiely for
11 Professor Dershowitz.

12 I believe, your Honor, that the parties are now in
13 agreement here. There were essentially two aspects to the
14 dispute. The first is what categories of documents are
15 properly designated confidential in this case. And the second
16 is the procedure for de-designating or redesignating documents
17 that were originally produced in the *Maxwell* case. I don't
18 agree that it imposes some undue burden on the plaintiff to
19 rereview these 475 documents to make redesignations. However,
20 we have agreed that we will follow the procedure which is set
21 forth in plaintiff's letter where we can make a request for a
22 redesignation on an as-needed basis and they will take up that
23 request promptly. The only thing is that we want the
24 definition of "Confidential Information" -- and I believe the
25 parties are in agreement on this -- to be the definition that's

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1 set forth in the attachments to both parties' letters, which
2 are those four categories of confidential information that
3 Ms. Moss just listed, which would be personally identifiable
4 information, victim identity information, and medical and
5 financial information. So I believe that this dispute is
6 essentially resolved.

7 THE COURT: Ms. Moss, is that right?

8 MS. MOSS: I think that's largely true, with the
9 following caveat: it appears to us from the defendants'
10 response letter and from what Mr. Kiely has just said that he
11 wants to remove any ability that we may have, if there is a
12 category of documents that they bring to our attention, that
13 doesn't fit neatly within the definitions of the proposed
14 protective order -- we of course would want to reserve the
15 right to bring that to the Court's attention. An example I can
16 provide you -- and I don't know that this would ever be a
17 dispute -- but an example I can provide you is, I know that
18 plaintiff's settlement agreement with Jeffrey Epstein was one
19 of the documents that she produced in her document production
20 in the *Giuffre v. Maxwell* case. That settlement agreement has
21 confidentiality requirements separate and apart from the
22 *Giuffre v. Maxwell* protective order. And so we would, even if
23 the *Giuffre v. Maxwell* order is set to one side, would not be
24 at liberty to remove the confidentiality.

25 Now, they have not asked to us do that, to be clear,

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1 and I don't know that there would be a dispute. But we need to
2 have the ability, if documents come up that there's some reason
3 we believe they need to remain confidential, that we can seek
4 the Court's intervention and guidance if we can't reach an
5 agreement with the defendants.

6 THE COURT: Mr. Kiely, you don't care about that, do
7 you?

8 MR. KIELY: Your Honor, not with respect to the
9 specific example that Ms. Moss just gave. The concern here is
10 that there would be a reservation of essentially unlimited
11 discretion for documents not falling into these enumerated
12 categories. The proposed language that we propose actually
13 includes a carve-out for precisely the type of document that
14 Ms. Moss just mentioned because, in that case, Ms. Giuffre
15 could not unilaterally remove the confidentiality designation
16 because there's a contractual confidentiality designation which
17 she owes under that settlement agreement. That's not the kind
18 of thing we're talking about.

19 THE COURT: OK. But can't these smart lawyers figure
20 out a reservation clause that will work? This is not a big
21 deal. And if, let's just say, if Ms. Giuffre decides she's not
22 going to waive any of it, then we have our remedies for that
23 too. But can't you guys figure this out?

24 MS. MOSS: Plaintiff certainly believes that that's
25 the appropriate course, your Honor. And that's what we've

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1 suggested.

2 MR. KIELY: Your Honor, think we can go back to the
3 drawing board one more time and try to come up with some
4 language that adequately satisfies both of our concerns here.

5 THE COURT: Wonderful.

6 What else would you like to talk about?

7 MS. MOSS: Your Honor, while we're on the topic of the
8 protective order -- and I don't know if this remains a dispute
9 or not -- but as I read the language that the defendant has
10 proposed, it would extend to the deposition transcript of the
11 plaintiff from the *Maxwell* matter. If I'm incorrect about
12 that, then certainly Mr. Kiely can correct me. But that is
13 another area where we do not believe that the parties in this
14 case should be removing confidentiality designations over a
15 deposition transcript that, as we understand it, has been the
16 subject of separate proceedings in the *Giuffre v. Maxwell* case,
17 and we would not of course want to interfere with any rulings
18 or decisions that you may have made in that case.

19 THE COURT: I'm not sure how the parties in this case
20 can agree that a deposition transcript that was marked
21 confidential under the *Maxwell* protective order is no longer
22 confidential. How does that work?

23 MR. H. COOPER: Well, your Honor, that has -- this is
24 Howard Cooper.

25 And by the way, he's too polite to tell you, Ms. Moss,

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1 that it's Christian "KIGH-lee," not "KEE-lee."

2 MS. MOSS: I apologize.

3 MR. H. COOPER: That's no problem at all.

4 But obviously, your Honor, that starts bleeding into
5 issues with regard to the overall situation that's given rise
6 to the disqualification motion that we've filed. So there's no
7 simple answer to that question, unfortunately. We do recognize
8 the limitations that we're currently all operating under.

9 THE COURT: I didn't understand one word of that
10 answer. It would seem to me that deposition transcripts that
11 are marked confidential in *Maxwell* are subject to the
12 interminable unsealing process in *Maxwell* and you people have
13 no say over it. Is that wrong?

14 MR. H. COOPER: Correct.

15 THE COURT: Am I wrong on that?

16 MR. H. COOPER: No. There's no disagreement from
17 Professor Dershowitz's side.

18 MR. C. COOPER: Nor from the plaintiff's side. Nicki?

19 MS. MOSS: That is correct. But there is wording in
20 the defendant's proposed protective order that if the plaintiff
21 were to reproduce her transcript, as we have done under this
22 Court's order in this matter, that somehow we would, we the
23 plaintiff, would have the ability to lift that confidentiality
24 designation. We do not believe that that is in fact the case.

25 THE COURT: I know you can draft around this.

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1 MR. H. COOPER: Well, with regard to the plaintiff's
2 own testimony, of course we believe she can lift
3 confidentiality. But my prior answer, your Honor, really just
4 reflected the situation that Professor Dershowitz finds himself
5 in, which I know is a topic for another day. Your Honor has
6 ordered the production of certain things from the *Maxwell* case,
7 but we of course understand the Court's continued process. And
8 nothing in this order is meant to suggest that we're trying to
9 go around it.

10 THE COURT: All right, then. It sounds like, if we're
11 not in agreement now, we can draft around so that we are in
12 agreement. Yes?

13 MS. MOSS: Yes.

14 MR. KIELY: Yes, your Honor.

15 THE COURT: What else?

16 MS. MOSS: Your Honor, from plaintiff's perspective, I
17 don't know that there is anything else that we view as
18 necessarily ripe. I mean, we certainly have concerns about
19 discovery, but it would be our expectation that we would
20 attempt to continue working those out with defense counsel and
21 bring them to you when they are ripe. I'm happy to discuss
22 those if you want, but there's nothing that I think necessarily
23 requires a ruling from you at this point.

24 THE COURT: Mr. Kiely, do you have anything else on
25 your agenda today?

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1 MR. KIELY: Well, your Honor, I do think that we
2 want -- I'm not sure exactly -- I know that the Court called
3 this status conference for an update on the status it of
4 discovery. If the Court wants to have a conversation about the
5 scheduling of discovery we're certainly prepared to discuss
6 that, but otherwise we could defer that to another day. I do
7 agree with Ms. Moss that the particular disputes that we
8 previewed in our joint letter to the Court are not ripe at this
9 point for the Court's consideration.

10 THE COURT: Right. I guess the real question is, how
11 long is this going to take? Going into it, I would not have
12 thought we would still be worried about our documents at this
13 stage. And yet it seems that we have a lot of unreviewed
14 documents. When is that going to be concluded?

15 MR. KIELY: Well, your Honor, I can speak to that. I
16 mean, we have undertaken really, in terms of private-party
17 litigation between individuals, what is a really massive email
18 review based upon an agreed set of search terms, and that
19 relates to Professor Dershowitz's Gmail account, and there is a
20 process in place relating to the Harvard account that, again, I
21 don't think is ripe for your Honor's consider at this time.
22 But we're talking about tens of thousands of emails. The final
23 agreed-upon set after much deliberation for the Gmail account
24 was something on the order of 50,000 emails. And they require
25 a careful review for not only responsiveness but privilege,

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1 particularly where Professor Dershowitz is a practicing
2 attorney and lots of the nonresponsive information is
3 privileged vis-a-vis other clients of his having nothing to do
4 with this case, and we have made a very diligent effort and
5 made our way through a good percentage of those documents, but
6 there are a number that remain outstanding. And plaintiff is
7 seeking to have us do a similarly broad review of Professor
8 Dershowitz's Harvard email account. And that frankly takes
9 time.

10 THE COURT: It doesn't sound like the last is in
11 process yet.

12 MR. KIELY: Well, yes, your Honor. It is in process.
13 Defense counsel had attempted to negotiate a voluntary
14 collection process with Harvard University that started in
15 August once the parties had agreed on search terms. For
16 various reasons that I won't get into, that process stalled and
17 about a month later plaintiff issued her own subpoena to
18 Harvard. And since then the parties have been conferring with
19 Harvard in a way to move this forward that works for all
20 parties and protects the parties' various interests, including
21 the attorney-client privilege, which Professor Dershowitz holds
22 not only with respect to his counsel in this matter and related
23 matters but also vis-a-vis other clients of his.

24 THE COURT: OK. When is the answer? You're telling
25 me you're in process. I don't want to be sitting here at the

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1 end of the first quarter saying, why have you not finished your
2 document discovery.

3 MR. KIELY: Well, your Honor, that depends in part
4 largely on the volume of email that we end up, from Harvard,
5 that we end up having to go through.

6 Now, again, I don't think this is quite ripe for your
7 Honor's consideration, but Harvard has its own review that it
8 needs to do to, under FERPA and for its own confidential
9 information, before it even releases any of these documents to
10 either of the parties, whether it be to Professor Dershowitz
11 for a privilege review or to the plaintiff.

12 And that process needs to occur before the parties
13 even get their hands on the documents. So I think that that
14 process is going to take at least several months.

15 THE COURT: It sounds to me like that process hasn't
16 even commenced.

17 MS. MOSS: That's correct, your Honor. It should not
18 be surprising, your Honor, that from the plaintiff's
19 perspective this has been woefully lacking. The defendant knew
20 from the minute this lawsuit was filed back in April of 2019
21 that he was going to need to produce email from his Harvard
22 email account. And he knew from his prior experience in the
23 *Edwards v. Dershowitz* matter, in which it took several months
24 to negotiate a protocol with Harvard, that that was going to be
25 necessitated.

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1 Now, I'm not suggesting that he needed to collect his
2 email before document requests were served on him, which we did
3 in February of this year, but he didn't even begin those
4 discussions with Harvard. And all we have been hearing since
5 we served those discovery requests is that it's in process.
6 Then it was that we needed to have search terms. And then the
7 excuse was, well, we're not doing anything because you, the
8 plaintiff, served a subpoena on Harvard.

9 What I can tell you is, within weeks of the return
10 date for that subpoena, Harvard had extracted the email, they
11 had provided us information on the volume of email. They ran
12 proposed search terms on that email. And we were able to get
13 that ball rolling with Harvard fairly quickly and are committed
14 to in good faith continue to work to narrow those search terms
15 and date filters to get the volume down to something that would
16 approximate a reasonable review. But the ball is really in the
17 defendant's court. These are his emails. He needs to work a
18 process out with Harvard for how they're going to conduct that
19 FERPA review and how it's going to be paid for. And that is
20 between him and Harvard. All we can do is try to give input
21 regarding the search terms and date filters to make the review
22 reasonable, which we have done and we are continuing to be in
23 the process of doing.

24 MR. KIELY: Your Honor, the suggestion that we've not
25 been diligent here is not correct. We did not have an

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1 agreed-upon set of search terms. And by the way, by "agreed
2 upon" I mean preliminary, a preliminary sense of what kind of
3 volume we're talking about before we can even begin to have a
4 conversation as to the burden involved, the burden on us and
5 the burden on Harvard. That set was not agreed upon until
6 August, and we immediately undertook a voluntary collection
7 process from Harvard at that point. They required us to agree
8 to pay for all of their costs before even allowing us to run
9 the search terms to know what kind of volume we're talking
10 about or have any other basic information that we need to make
11 an estimate of those costs and the burden to Professor
12 Dershowitz.

13 So it's been a challenging process, and we've been
14 diligent throughout it.

15 THE COURT: Can I ask you one question?

16 MR. KIELY: Yes.

17 THE COURT: What's your alternative? You've got to do
18 it one way or the other. Counsel says that Harvard has run the
19 search terms and knows the volume on those search terms. I
20 don't understand what's holding this up.

21 MR. KIELY: Your Honor, that was last week that we
22 first got that set of search terms, and that returned, I think,
23 150,000 emails. That is not at all reasonable, in light of --
24 that imposes a massive undue burden, in terms of cost, in terms
25 of time, and it's not at all proportional to the needs of the

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1 case, and particularly in light of the massive production of
2 email we have already made from Professor Dershowitz's Gmail
3 account. And there are indications from that production that
4 the most -- there are indications from that production that
5 responsive information contained within the Harvard account was
6 forwarded to the Gmail account and has or will be produced to
7 the plaintiff. We can't do a review of 150,000 emails from
8 Professor Dershowitz's Harvard account.

9 THE COURT: What are you doing about it? Have you
10 talked to counsel about narrowing the terms or the time?

11 MR. KIELY: Your Honor, we are having those
12 discussions. As I said, we just got that search term report
13 late last week. We had a call with plaintiff's counsel and
14 Harvard's counsel on Friday. We are working on exchanging
15 proposals to narrow the search terms. Hopefully we can reach
16 agreement. If not, we will provide both of those proposals to
17 Harvard's counsel, who will then run the terms and see what
18 kind of reduction it produces. But it's an iterative process.
19 We're working with a third party. And it takes time.

20 MR. H. COOPER: I don't think it's fair for Ms. Moss
21 to suggest that there was any sort of willful attempt to delay
22 this process. As Mr. Kiely has suggested, we've been working
23 with plaintiff's counsel. We're working with Harvard's
24 counsel. And we're trying to make this process, with a large,
25 massive volume of documents, as expeditious as possible. So I

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1 don't think it's fair to suggest that Professor Dershowitz was
2 delaying in any sort of way.

3 THE COURT: OK. But this was not a surprise.
4 Apparently he's gone through this before in connection with
5 other cases. And what's going to happen now is, you're going
6 to tell me in three weeks that you've finally reached
7 agreement, and then Harvard is going to go on vacation, and
8 then we're going to be at the end of the first quarter.

9 All right. Am I wrong that this is the largest batch
10 of documents still awaiting review?

11 MS. MOSS: I believe that's correct, your Honor. We
12 also have not received any text messages or any Twitter Direct
13 Messages or anything like that from the defendants either, but
14 we don't know the volume, and I would suspect that this Harvard
15 email account is the most voluminous.

16 THE COURT: What's the story with whatever counsel
17 just said?

18 MR. KIELY: Your Honor, we have not received any text
19 messages from plaintiff either. We have to have a
20 meet-and-confer process about the extent to which there is
21 going to be an exchange of text messages. But essentially,
22 just to give your Honor some background here, we have
23 plaintiff, who has largely relied upon her productions from
24 *Maxwell* of email that was reviewed and produced in that case,
25 and is now criticizing us for the time it's taking to take on a

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1 much more voluminous review, that's many magnitudes larger, of
2 what she had to do. And we've been work extremely diligently
3 on it for months. Our time records would indicate that. It's
4 a ton of email to slog through.

5 And it's important to note here that, you know, unlike
6 in some other cases where you can apply privilege terms and
7 then produce anything that's not privileged, Professor
8 Dershowitz is a practicing attorney. The nonresponsive
9 documents contain privileged information vis-a-vis other
10 clients of his, and it requires a careful linear review of, for
11 the Gmail, 50,000, for the Harvard email I expect to negotiate
12 a number that is much lower than that so that the process can
13 be completed more quickly. But it just takes time.

14 And the burden has not been -- the burden here is not
15 symmetrical with regard to discovery of email. And so it's
16 absolutely going to take more time for Professor Dershowitz to
17 complete his productions on a rolling basis, per the parties'
18 agreement, than it is for plaintiff to complete her
19 productions.

20 THE COURT: All right. How about this? Would you
21 write to me, in -- let me just get a date -- how about you
22 write to me no later than December 22, and tell me where you
23 are and what you're up to, please.

24 MR. KIELY: Yes, your Honor, certainly.

25 THE COURT: What else, friends?

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1 MR. H. COOPER: Your Honor, this is Howard Cooper for
2 Professor Dershowitz. I don't want to interrupt if plaintiff's
3 counsel has additional items, but if they're done, there is an
4 item I would like to raise.

5 THE COURT: Yes, sir.

6 MR. C. COOPER: Before we move to other items, I
7 think, if you will indulge another moment, I think Ms. Moss
8 ought to update on where we are in terms of producing a
9 voluminous amount of text messaging, which is Ms. Giuffre's
10 apparently preferred method of electronic communication, and
11 our expectation that Professor Dershowitz will likewise produce
12 his relevant discoverable text messaging.

13 Would you please proceed, Ms. Moss.

14 MS. MOSS: Certainly. And to be clear, your Honor,
15 the document requests for both of the parties included and
16 defined "Documents" to include text messages. We collected the
17 plaintiff's text messages. We have reviewed them. We reviewed
18 them for privilege, reviewed them for confidentiality, and
19 indeed we were poised to be able to do a production, when we
20 inquired about the status of the defendant's text message
21 production and learned that it apparently hasn't even been
22 collected or the process even been put in place. And so we did
23 not make our initial production until it was going to be clear
24 that this was going to be reciprocal, because of course we
25 don't believe that the burden should only be on her or the

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1 obligation should only be on the plaintiff to produce text
2 messages. It should be a two-way street here. And we've even
3 redacted them for confidentiality so that they could be
4 produced in advance of there being an agreed protective order,
5 redactions that we would likely be able to remove once a
6 protective order is in place.

7 And we've done that likewise, going to great effort to
8 collect and put her Twitter Direct Messages -- which are far
9 more difficult to collect and put in a review process than text
10 messages are. We've done that process as well and produced
11 them.

12 So we believe that we are very close, with the caveat
13 that we still have confidential information to produce once
14 there's a protective order in place, of being complete with the
15 plaintiff's document production.

16 THE COURT: OK. Mr. Kiely, it's not your position
17 that texts and tweets are not documents, is it?

18 MR. KIELY: Your Honor, no, that's not our position.
19 The question would be -- and I was not prepared to address this
20 particular issue today. More homework needs to be done. But
21 the question would be, I know from my experience in other cases
22 that collecting text messages and particularly iMessages is an
23 enormously complex and expensive process, and oftentimes there
24 is no guarantee of success of recovering anything relevant. So
25 we need to understand what would be involved in doing that and

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1 the extent to which Professor Dershowitz even has relevant text
2 messages.

3 And with regard to tweets, tweets of course are public
4 information. They are equally accessible to plaintiff.

5 With respect to Direct Messages, we don't -- plaintiff
6 has produced those. We have no objection to producing relevant
7 Direct Messages from Professor Dershowitz's Twitter.

8 THE COURT: I wasn't sure what you said about texts,
9 please.

10 MR. KIELY: Well, your Honor, I'm not prepared to
11 address the Court on our final position with respect to the
12 production of Professor Dershowitz's texts. I certainly don't
13 dispute that they fall within the definition of "Documents."
14 The question is, what is involved in collecting them and
15 producing them for use in litigation. I know from prior
16 experience it is a massively complex and expensive process. So
17 we need to understand what that burden would be before we can
18 have a discussion about text messages. And I didn't. So
19 that's our position.

20 THE COURT: Why have we not made inquiry until now?

21 MR. KIELY: Your Honor, I would have to go back and
22 look at the formal document requests, but there have not been
23 any follow-up requests from plaintiff for the production of
24 text messages, and we have been focused on making as much email
25 production as we possibly can.

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1 THE COURT: All right. It sounds like you had better
2 look at it. I think I heard Ms. Moss say that these were
3 defined terms.

4 Ms. Moss, am I wrong, what you said?

5 MS. MOSS: The definition of "Documents" included
6 texts. Yes.

7 MR. KIELY: Your Honor, I will have to go back and
8 look at our objections. Parties include all kinds of things
9 within the definition of "Documents" that are not ultimately
10 produced in litigation. So, again, I was not prepared to
11 address this right now.

12 MR. C. COOPER: Your Honor, we are in a litigation
13 where text messages are not -- typically and routinely
14 understood to be within the definition of "electronic
15 documents" and are produced. So I don't know where this
16 dispute is coming from.

17 MR. H. COOPER: There is no dispute here yet, your
18 Honor. And I think it's fair to say that from Professor
19 Dershowitz's perspective, given the level of time, energy and
20 effort that has gone into responding to plaintiff's requests,
21 which are asymmetrical in part because of the significant
22 spoliation issue on the plaintiff's side, it's surprising that
23 we are getting into this level of detail, when all of this is
24 under discussion. And what I can say from the defendant's
25 perspective is, we are committed to moving this case forward.

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1 You've asked us to file a report by December 22nd. We will do
2 so. We will have a position with regard to text messages and
3 proportionality by then. But in the interim we're hopeful that
4 the multitude of discussions that have taken place to date,
5 trying to work these things out cooperatively, will continue,
6 rather than prematurely placing them in front of you.

7 THE COURT: All right. The only thing, Mr. Cooper,
8 that I'll check -- I'm sorry -- Mr. Howard Cooper. The only
9 thing that concerned me was hearing that no inquiry had even
10 been made yet with respect to texts and all of that other
11 tweety stuff. That was the concern.

12 MR. H. COOPER: And, your Honor, if that's what you
13 heard, I understand the Court's concern. I think it's fair to
14 say that we are working diligently on everything, and we are
15 regularly in discussion with plaintiff's counsel, and for
16 anyone in this call to suggest otherwise is without basis in
17 fact. And I think that we ought to direct our efforts
18 prospectively to move this case forward, which is certainly
19 what it sounds like all counsel and all parties are interested
20 in doing.

21 THE COURT: All right.

22 MR. C. COOPER: Amen to that.

23 MR. H. COOPER: In that regard, your Honor, I did have
24 another issue, but I don't want to interrupt plaintiff's
25 counsel if they're still placing things in front of you.

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1 THE COURT: Mr. Charles Cooper, have you finished?

2 MR. C. COOPER: Your Honor, I know of nothing that's
3 come up that we need to elaborate or add to. Thank you.

4 THE COURT: OK. Mr. Howard Cooper.

5 MR. H. COOPER: Thank you, your Honor.

6 We have been asking for months to take the plaintiff's
7 deposition. I recognize that factors such as an unprecedented
8 pandemic have intervened, so I'm not faulting anybody for the
9 plaintiff's lack of -- unavailability. But basically what
10 we've been told to date is that she's not available, she can't
11 travel to the United States. The parties have agreed to two
12 days for each of Ms. Giuffre and Professor Dershowitz, and we
13 would like to get that on the calendar. And to be clear, it's
14 a deposition that we will be videotaping. We would prefer to
15 do it in person, socially distanced, at a mutually acceptable
16 location so that everybody is comfortable, done in accordance
17 with CDC guidelines. We're not asking to do it next week. But
18 this really could not drag on, and we would like some
19 assistance from the Court in getting Ms. Giuffre's deposition
20 on the calendar. Thank you.

21 THE COURT: Were you going to do it before you have
22 all the documents?

23 MR. H. COOPER: Your Honor, we would like to get it on
24 the calendar, assuming that it will be at a date after the
25 documents have been produced.

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1 MR. C. COOPER: Your Honor, may I speak to this issue?

2 THE COURT: Yes.

3 MR. C. COOPER: Thank you.

4 We certainly recognize that Ms. Giuffre's deposition
5 will be taken. Two points. First, the same question you ask
6 is the question that we ask, and we believe that neither her
7 deposition nor Professor Dershowitz's deposition should or can
8 reasonably be taken before both sides have completed their
9 document production, number one. And, number two, there have
10 been, sadly, Ms. Giuffre has experienced a number of
11 health-related problems, quite apart from the pandemic, that
12 have presented obstacles, at least thus far, to scheduling a
13 deposition. We can certainly commit to scheduling a deposition
14 pending travel restrictions, and hopefully the vaccine and
15 other prayed-for events that are going to make this pandemic
16 issue, particularly for somebody who lives in Australia,
17 relaxed -- but we're not resisting in the slightest the
18 deposition. It's these other obstacles that I think are going
19 to have to be cleared before either side can really
20 realistically take the depositions of the two parties in this
21 case.

22 MR. KIELY: May I respond, your Honor?

23 THE COURT: Yes, sir.

24 MR. KIELY: This is the first I'm hearing about health
25 issues, and I obviously regret hearing about that and will

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1 defer to them. I will note that the travel restrictions are
2 difficult to parse. Ms. Giuffre is a United States citizen.
3 We understand that in connection with other matters, since this
4 case has been filed, she has come to the United States a couple
5 times and perhaps had been doing so regularly. We don't think
6 that we need necessarily to, at all, to complete Professor
7 Dershowitz's document production, again recognizing the
8 asymmetry in those productions, in the parties' productions,
9 before going forward with Ms. Giuffre's deposition. She after
10 all is the plaintiff who initiated this case. So what I would
11 ask, as a practical matter, is to hear from plaintiff's counsel
12 when in the next 60 to 90 days we can reserve two days for her
13 to do a deposition. As I said, we would like do it socially
14 distanced, in the same room, large conference room, CDC
15 guidelines to be followed, and obviously everything will be
16 subject to whatever particular needs exist, restrictions exist
17 at the time. We'll all have to be flexible. But given the
18 difficulty we've had and the age of the case, we would like to
19 get her deposition on the books as soon as we reasonably can.

20 MS. MOSS: Your Honor, if I may -- this is Ms. Moss.
21 The pandemic began in March. She has not traveled out of
22 Australia since then and the travel restrictions that have been
23 put in place by the Australian government, which have run the
24 gamut from not allowing travel outside but, as importantly, her
25 concern about being allowed to return to Australia, where her

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1 children, her minor children, live. So even if she could come
2 to the United States for this deposition, she for obvious
3 reasons is quite concerned about whether she would be able to
4 return back to Australia. And realistically, until we have a
5 better sense of what's going to be allowed in terms of this
6 global pandemic, it just -- you know, the notion that we have
7 not been agreeing to dates, it has been -- we all well know
8 that, since March of 2020, which is just a few short months
9 after we took over representing Ms. Giuffre, this pandemic came
10 into being. And that has been the primary reason that we have
11 not been able to schedule anything. And I don't see that
12 changing any time soon, unfortunately.

13 MR. C. COOPER: And I would just hasten to add this.
14 We are united with counsel for defendants in the strong
15 preference that the depositions in the case take place in
16 person under proper health-related protocols. And we are
17 committed and will in good faith negotiate with our friends on
18 the other side to make that happen when it can reasonably be
19 done, your Honor.

20 THE COURT: All right. Why don't you do this. Why
21 don't you write to me no later than January 15 on where you are
22 on your dates. We ought to know a lot more by then, and
23 hopefully you'll have a better sense of what is doable and not
24 doable.

25 MR. C. COOPER: Very well, your Honor.

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1 MR. KIELY: Very well, your Honor.

2 THE COURT: Anything else? Yes, sir.

3 MR. KIELY: The only other item I had hoped to ask the
4 Court about is, your Honor, we will shortly have to the Court
5 the fully briefed disqualification motion. I don't know
6 whether your Honor intends to hear argument on that, but we're
7 hoping to have the opportunity to address it. We think it's an
8 important motion.

9 THE COURT: Yes, sir. We'll take a look.

10 MR. KIELY: Thank you, your Honor.

11 THE COURT: Anything else, friends?

12 MR. C. COOPER: Not from the plaintiff's side, Judge
13 Preska.

14 MR. H. COOPER: And your Honor, from the defendant's
15 side, I just wish everybody a happy Thanksgiving and a safe
16 one.

17 THE COURT: And you as well. Thank you.

18 MR. C. COOPER: And the same to you, Howard, as well,
19 and friends.

20 COUNSEL: Thank you.

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